

SERVICE DATE – LATE RELEASE JULY 25, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42130

SUNBELT CHLOR ALKALI PARTNERSHIP
v.
NORFOLK SOUTHERN RAILWAY COMPANY

Decided: July 24, 2014

On June 20, 2014, the Board served the final merits decision (Merits Decision) in this proceeding regarding the challenge by Sunbelt Chlor Alkali Partnership (Sunbelt) to the reasonableness of certain rates established by Norfolk Southern Railway Company (NS). In a decision served on July 2, 2014, the Board tolled the deadline for filing petitions for reconsideration and the joint petition to correct technical errors until July 30, 2014.¹

On July 14, 2014, Sunbelt filed a motion requesting an extension of the page limit for petitions for reconsideration to 30 pages.² As justification for its motion, Sunbelt asserts that the Merits Decision involves multiple novel legal issues, that it incorporates intervening regulatory changes relevant to Sunbelt's evidence, and that the typical 20-page limit is insufficient given its length and complexity. In addition, Sunbelt requests permission to file a 20-page technical corrections supplement (i.e., in addition to the joint petition) limited to matters where the parties disagree about whether an issue is technical in nature.

NS filed a reply to Sunbelt's motion on July 16, 2014, and Sunbelt filed a letter of explanation, also on July 16, 2014. In its reply, NS does not object to the 30-page limit on petitions for reconsideration provided that replies to such petitions are permitted an equal number of pages. NS does oppose the 20-page technical corrections supplement on several grounds, noting that single-party supplements contravene the Board's intent to require parties to reach agreement on technical issues to the fullest possible extent. Furthermore, NS argues that a separate supplement on technical issues could result in substantive issues being raised in two places—the supplement and the petition for reconsideration. NS also argues that the 20-page

¹ In a rate case, parties are permitted to file a joint motion for technical corrections to a final merits decision in accordance with the procedure set forth in Public Service Co. of Colorado d/b/a Xcel Energy v. Burlington Northern & Santa Fe Railway (Xcel 2004), 7 S.T.B. 1029, 1029-30 (2004).

² Our regulations specify that petitions for reconsideration and any replies thereto must not exceed 20 pages in length. 49 C.F.R. § 1115.3(d).

limit is excessive but states that it would not oppose conditioned supplemental technical correction petitions limited to five pages. In its July 16, 2014 letter, Sunbelt clarifies that it is not seeking a separate technical corrections supplement. Rather, Sunbelt indicates it is requesting that the Board extend the 20-page limit for the petitions for reconsideration to 30 pages, and allow for an additional 20 pages to address matters that the parties may be unable to agree are technical in nature, if any.

The Board will extend the page limit for petitions for reconsideration to 50 pages. As noted in Xcel 2004, however, parties are encouraged to address any proposed technical corrections to the extent possible in the joint petition for technical corrections. At the same time, given the complexity of this case, and the fact that the agency has granted page limit waivers under similar circumstances in the past,³ the Board does not believe that a 50-page limit on petitions for reconsideration is unreasonable. Furthermore, in the interest of fairness, the Board will likewise extend the page limit for replies to petitions for reconsideration to 50 pages.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Sunbelt's motion, as clarified, for an extension of the page limits for petitions for reconsideration in this proceeding is granted.
2. Petitions for reconsideration in this case and replies thereto shall not exceed 50 pages in length.
3. This decision is effective on the date of service.

By the Board, Joseph Dettmar, Acting Director, Office of Proceedings.

³ See, e.g., E.I. DuPont de Nemours & Co. v. Norfolk S. Ry., NOR 42125, slip op. at 2 (STB served June 11, 2014) (granting request by complainant to extend the petition for reconsideration limit to 50 pages); Burlington N., Inc. & Burlington N. R.R.—Control & Merger—Santa Fe Pac. Corp. & Atchison, Topeka & Santa Fe Ry., FD 32549, slip op. at 1 (STB served Feb. 11, 2000) (granting waiver of 20-page limit under 49 C.F.R. § 1115.3(d)); Pa. Power & Light Co. v. Consol. Rail Corp., NOR 38186S et al., slip op. at 2 (ICC served Aug. 31, 1984) (granting waiver of 30-page limit on appeal filings due to the “size and complexity of the record”).